

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

BRADLEY THOMAS &
LAURIE THOMAS,

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CV1.06CV165.DRB

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NCB MANAGEMENT SERVICES,
INC., & JOHN HARDING,
INDIVIDUALLY,

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Defendants.

NOTICE OF FILING

TO: Debra P. Hackett, Clerk of Court
Middle District of Alabama
Montgomery, Alabama 36104

Please take notice that the undersigned has, by mail this date, served on counsel for the Plaintiff, the following:

(X) Defendant, NCB MANAGEMENT SERVICES, INC.'s, Motion in Opposition to Plaintiffs' Motion to Deem Requests for Admissions as Admitted.

Dated this the 31st day of August, 2006

Respectfully submitted,

/s/ Michael P. Barratt
JEFFREY L. LUTHER (LUTHJ0532)
MICHAEL P. BARRATT (BARRM3920)
Attorneys for Defendants

OF COUNSEL:

LUTHER OLDENBURG & RAINES
Post Office Box 1003
Mobile, AL 36633
PH: 251-433-8088
FX: 251-433-8011

CERTIFICATE OF SERVICE

I do certify that I have on this 31st day of August, 2006, served a copy of the foregoing pleading on all counsel of record via U.S. First Class Mail on the following:

David G. Poston, Esquire
Post Office Drawer 6504
Dothan, AL 36302

Gerald A. Templeton, Esquire
The Templeton Group, P.C.
1000 Providence Park, Suite 200
Birmingham, AL 35244

/s/ Michael P. Barratt
OF COUNSEL

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

BRADLEY THOMAS, &)
LAURIE THOMAS)
)
Plaintiff,)
)
v.) 1:06-CV-165
)
NCB MANAGEMENT SERVICES,)
INC., & JOHN HARDING,)
INDIVIDUALLY)
)
Defendants.)

**DEFENDANT, NCB MANAGEMENT SERVICES, INC.'s
MOTION IN OPPOSITION TO PLAINTIFFS' MOTION
TO DEEM THE FACTS AS ADMITTED**

COMES NOW, the Defendant, NCB MANAGEMENT SERVICES, INC., by and through its undersigned counsel of record, and files this Motion in Opposition to the Plaintiffs' Motion to Deem the Facts as Admitted. In support of said Motion, the Defendant, NCB MANAGEMENT SERVICES, INC., would show unto this Honorable Court the following, separately and severally, to-wit:

1. Defendant, NCB MANAGEMENT SERVICES, INC., was served with discovery on July 3, 2006.
2. Through inadvertence, the Plaintiffs' Request for Admissions were not made known to the undersigned.

3. Upon learning that the Admissions were due, the Defendant immediately answered the Plaintiff's Request for Admissions and sent the responses to the Plaintiff.

4. The Defendants received no correspondence regarding these Requests for Admissions being due prior to the Plaintiff filing their Motion to Deem the Requests for Admissions as admitted.

5. "Pursuant to Fed. R. Civ. P. 36(b), [T]he Court has the authority to relieve a party from an admission made by default if: (1). Presentation of the merits of the case will be subserved; and (2). The party who obtained the admission will not be prejudiced by the withdrawal." *Russell v. Gilliam*, 2006 U.S. Dist. LEXIS 42965. In the matter at hand, several of the Plaintiff's Requests for Admissions apply directly to controverted legal issues lying at the heart of the case, primarily Request #8 stating, "You violated the Fair Debt Collection Practices Act, 15 U.S.C. Sect. 1692 et seq., in your attempts to contact third-parties to collect the alleged debt from plaintiffs." Should this Request be deemed admitted it will clearly subserve the merits of this case and highly prejudice the Defendant.

6. Neither party has responded to Interrogatories or Request for Production in this case and no depositions have been taken as this case is still in the early stages of discovery.

7. The Plaintiffs will not be prejudiced by denial of this Motion as the

Plaintiffs have already received the Defendant's Responses to the Request for Admissions.

WHEREFORE, the Defendant, NCB MANAGEMENT SERVICES, INC., respectfully requests this Honorable Court to denial the Plaintiffs' Motion to Deem the Requests for Admissions as admitted. This Defendants never willfully or intentionally sought to withhold any discoverable information from the Plaintiffs and upon discovery of this Defendant's oversight, this Defendant took immediate action to correct said oversight.

Respectfully submitted,

/s/ Michael P. Barratt
JEFFREY L. LUTHER (LUTHJ0532)
MICHAEL P. BARRATT (BARRM3920)
Attorneys for Defendants

OF COUNSEL:

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Mobile, Alabama 36633
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FX: (251) 433-8011

CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of August, 2006, served a copy of the foregoing upon counsel to all parties to this proceeding by placing the same in the United States mail, properly addressed and first-class postage prepaid.

David G. Poston, Esquire
Brock and Stout
P. O. Drawer 311167
Enterprise, AL 36331-1167

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/s/ Michael P. Barratt

OF COUNSEL